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R75-794  
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January 19, 1976

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**ARIZONA ATTORNEY GENERAL**

Honorable Jones Osborn  
State Senator, District 5  
Arizona State Senate  
Phoenix, Arizona 85007

Dear Senator Osborn:

In your letter of December 22, 1975 you requested an opinion as to the legality of certain "Monte Carlo" or "Las Vegas" nights sponsored by civic organizations, and, in particular, if such activities are prohibited by A.R.S. § 13-431.

The plan referred to involves the purchase of chips on admission, for a stated sum. This is referred to as a "donation". The chips are used to play a variety of games--blackjack, craps, roulette, etc. The participant may buy more chips if he runs out, and continue playing. At the end of the evening donated prizes are auctioned, with bids made by chips. The chips are never redeemed for money.

Your question is: Does such a plan conducted be a civic organization constitute gambling, in violation of A.R.S. § 13-431?

It would appear that the plan is in clear violation of at least two statutes: A.R.S. § 13-341 and A.R.S. § 13-436. The fact that the purpose is intended to be charitable and the fact that this may be an isolated casual occurrence as opposed to organized gambling does not alter the application of the statute.



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A.R.S. § 13-431 prohibits as a misdemeanor the playing of a list of enumerated games--among them all the games that would normally be found in a casino. While the game of craps is not named in this somewhat antiquated list, the courts have interpreted the statute to include craps as well as:

1. any game played with machines, instruments or devices, or with cards or dice,
2. in which the element of chance is present, and
3. which is for something of value, see State v. LeNoir, 60 Ariz. 57, 130 P.2d 1037 (1942).

Thus all of the games contemplated in a "casino night" could be encompassed by the statute.

It would also appear that the auction of donated prizes, in which the participants enter bids with chips, is a violation of A.R.S. § 13-436, which forbids a lottery scheme or device.

The leading Arizona cases have defined a lottery as containing three elements:

1. the offering of a prize, and
2. the award of this prize by chance
3. Among persons who have paid a valuable consideration for the chance to obtain a prize, See In re Gray, 23 Ariz. 461, 466, 204 P. 1029 (1922); Engle v. State, 53 Ariz. 458, 469, 90 P.2d 988 (1939); Boies v. Bartell, 82 Ariz. 217, 310 P.2d 834 (1957).

Obviously the first element--the offering of a prize--has been met. Element No. 2 is indirect, in that the people buy the prize with chips they won at gambling. However, the previous interpretation of the statute indicates that the court will look at the substance of the plan to determine whether or not it is

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a lottery, In re Gray, 23 Ariz. at 465. Chips won by chance, used to bid for prizes, would appear to fill element No. 2 despite the fact it is a two-stage procedure.

Similarly, the purchase of chips at the door would fulfill element No. 3--the participants have paid consideration for the chance to obtain a prize. The characterization of this as a "donation" would probably appear to be a subterfuge to the court, although this has not yet been tested in any Arizona appellate court.

There is no exception in A.R.S. §§ 13-341 and 13-436 for either charitable organizations or private social gambling, so the character of the organization would not provide a defense. Some forms of social or charitable gambling do have specific legislative approval; i.e., bingo, A.R.S. § 5-401 et seq.; and sports betting by private persons; A.R.S. § 13-440 (added Laws 1971). If a charitable exception is to be made for plans similar to what you have described, it would appear to be a matter for the Legislature, see State v. Cartwright, 20 Ariz. App. 94, 510 P.2d 405 (1973).

You may be interested to know that the proposed Criminal Code Revision would remove criminal liability from the player. However, under the proposed revision, it would appear that the organizers and promoters of the casino nights in question would retain criminal liability, see Arizona Revised Criminal Code §§ 3300-3309 (Proposed Draft, 1975).

I hope this information will be of assistance to you.

Sincerely,



BRUCE E. BABBITT  
Attorney General

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